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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

IN THE MATTER OF: ) Docket Nos.  
Eastern Municipal Water ) CERCLA-9-2002-0007  
District, )  
Respondent. ) COMPLAINT/CONSENT AGREEMENT  
AND FINAL ORDER

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U.S. EPA, Region 9

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action initiated pursuant to Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9609, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, as revised by 64 Fed. Reg. 141 (23 July 1999). Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is the Eastern Municipal Water District ("Respondent" or "EMWD").
2. EMWD operates a waste water reclamation plant in Riverside County, California, the Hemet/San Jacinto Regional Water Reclamation Facility, located at 777 North Sanderson Avenue, San Jacinto, California (hereinafter the "Facility").
3. This Complaint/Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. § 22.13(b), simultaneously commences

1 and concludes this proceeding, wherein EPA alleges that  
2 Respondent, at the Facility, violated Section 103 of CERCLA,  
3 42 U.S.C. § 9603, and its implementing regulations.

4 B. GENERAL ALLEGATIONS

5 4. Respondent is a "person" as defined by Section 101(21) of  
6 CERCLA, 42 U.S.C. § 9601(21).

7 5. The real property and improvements thereto located at the  
8 Facility in Riverside County, California, on North Sanderson  
9 Avenue in San Jacinto, California, are a "facility" as  
10 defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

11 6. At all times relevant to this CA/FO, Respondent has been the  
12 owner and operator of the Facility.

13 7. Any person in charge of a facility is required under CERCLA  
14 Section 103(a), 42 U.S.C. § 9603(a), and 40 C.F.R. §  
15 302.6(a), to immediately notify the National Response Center  
16 ("NRC") as soon as the person in charge has knowledge of a  
17 release of a hazardous substance from such facility in an  
18 amount equal to or greater than the reportable quantity.

19 8. Ferric chloride is a "hazardous substance" as defined under  
20 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with a  
21 reportable quantity of one thousand (1,000) pounds, as  
22 designated in 40 C.F.R. Part 302, Table 302.4.

23 9. Based on information supplied by Respondent, EPA alleges  
24 that Respondent has violated Section 103 of CERCLA, 42  
25 U.S.C. § 9603, and 40 C.F.R. § 302.6. Respondent neither  
26 admits nor denies this allegation.

27 10. Respondent is subject to the powers vested in the EPA  
28

1 Administrator by Section 109 of CERCLA, 42 U.S.C. § 9609.

2 11. Section 109 of CERCLA, 42 U.S.C. § 9609, authorizes the  
3 assessment of a civil penalty for any violation of Section  
4 103 of CERCLA, 42 U.S.C. § 9603.

5 12. The Administrator of EPA has delegated this authority under  
6 CERCLA to the Regional Administrators. The Regional  
7 Administrator, EPA Region IX, in turn, has delegated the  
8 authority to the Director of the Superfund Division.

9 C. ALLEGED VIOLATION

10 COUNT I

11 (Failure to Immediately Notify the National Response Center)

12 13. Paragraphs 1 through 12 above are incorporated herein by  
13 this reference as if they were set forth here in their  
14 entirety.

15 14. On August 15, 2001, EMWD employees cut a section of a pipe  
16 known as the "PVC ferric chloride line" at the Facility and  
17 capped the cut pipe with a brass plug.

18 15. Based on information supplied by Respondent, because of the  
19 corrosivity of ferric chloride, the brass plug failed during  
20 the evening or night of August 15, 2001 allowing  
21 approximately 4,661 to 5,228 pounds of ferric chloride to  
22 flow out of a storage tank through the PVC ferric chloride  
23 line and be released.

24 16. Respondent had actual or constructive knowledge of the  
25 release of a reportable quantity of ferric chloride from the  
26 Facility at or before 6:00 AM pst on August 16, 2001.

27 17. The release exceeded the reportable quantity of 1,000 lbs  
28

1 for ferric chloride specified in 40 C.F.R. Part 302, Table  
2 302.4.

3 18. Respondent did not notify the NRC of the August 15, 2001  
4 release until September 14, 2001.

5 19. Therefore, EPA alleges that Respondent failed to immediately  
6 notify the NRC of the release of a reportable quantity of a  
7 hazardous substance in violation of Section 103 of CERCLA,  
8 42 U.S.C. § 9603.

9 D. CIVIL PENALTY

10 20. Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part  
11 19, authorize a civil penalty of up to \$27,500 per day, for  
12 each day a violation of CERCLA Section 103 continues. In  
13 the case of a second or subsequent violation, the amount of  
14 such penalty may be increased up to \$82,500 for each day the  
15 violation continues.

16 21. Based on the facts alleged herein and upon all the factors  
17 which the Complainant considers pursuant to the Enforcement  
18 Response Policy for Sections 304, and 312 of the Emergency  
19 Planning and Community Right-to-Know Act and Section 103 of  
20 the Comprehensive Environmental Response, Compensation and  
21 Liability Act ("ERP"), including the nature, extent, and  
22 gravity of the violations, the Respondent's ability to pay,  
23 prior history of violations, degree of culpability, and any  
24 economic benefit, and such other matters as justice may  
25 require, Complainant proposes that the Respondent be  
26 assessed and Respondent agrees to pay four thousand eight  
27 hundred and seventy two dollars (\$4,872.00) as the civil  
28

1 penalty for the violations alleged herein.

2 E. ADMISSIONS AND WAIVERS OF RIGHTS

3  
4 22. Respondent admits and agrees that EPA has jurisdiction and  
5 authority over the subject matter or the action commenced in  
6 this CA/FO and over Respondent pursuant to Section 109 of  
7 CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 22. Respondent  
8 consents to and agrees not to contest EPA's jurisdiction and  
9 authority to enter into and issue this CA/FO and to enforce  
10 its terms. Further, Respondent will not contest EPA's  
11 jurisdiction and authority to compel compliance with this  
12 CA/FO in any enforcement proceedings, either administrative  
13 or judicial, or to impose sanctions for violations of this  
14 CA/FO.

15 23. Respondent neither admits nor denies the allegations of fact  
16 or law set forth in this CA/FO. Respondent hereby waives  
17 any rights Respondent may have to a hearing on any issue  
18 relating to the factual allegations or legal conclusions set  
19 forth in the CA/FO. Respondent hereby consents to the terms  
20 of this CA/FO and the issuance of this CA/FO without  
21 adjudication.

22 24. Complainant and Respondent agree that settlement of this  
23 matter is in the public interest and that entry of this  
24 CA/FO without further litigation is the most appropriate  
25 means of resolving this matter.

26 F. PARTIES BOUND

27 25. This CA/FO shall apply to and be binding upon Respondent and  
28

1 its agents, successors and assigns and upon all persons  
2 acting under or for Respondent, until such time as the civil  
3 penalty required under Section D has been paid and any  
4 delays in payment and/or stipulated penalties have been  
5 resolved. At such time as those matters are concluded, this  
6 CA/FO shall terminate and constitute full and complete  
7 settlement of the violations alleged herein.

8 26. No change in ownership or corporate, partnership or legal  
9 status relating to the Facility will in any way alter  
10 Respondent's obligations and responsibilities under this  
11 CA/FO.

12 27. Until termination of this CA/FO, Respondent shall give  
13 notice of this CA/FO to any successor in interest prior to  
14 transfer of ownership or operation of the Facility and shall  
15 notify EPA within seven (7) days prior to such transfer.

16 28. The undersigned representative of Respondent hereby  
17 certifies that he is fully authorized by Respondent to enter  
18 into and execute this CA/FO, and to legally bind Respondent  
19 to it.

20  
21 G. CERTIFICATION OF COMPLIANCE

22  
23 29. Upon signing this CA/FO, Respondent certifies to EPA that  
24 the Facility has fully complied with the requirements of  
25 Section 103 of CERCLA that formed the basis for the  
26 violations alleged in Section C above, and that the Facility  
27 is now in compliance with the relevant current reporting  
28

obligations under Sections 302 and 303 of the Emergency Planning and Community Right-To-Know Act ("EPCRA") and Section 103 of CERCLA.

30. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

H. PAYMENT OF CIVIL PENALTY

31. Respondent consents to the assessment of and agrees to pay a civil penalty of four thousand eight hundred and seventy two dollars (\$4,872.00) in full settlement of the civil penalty claims made in this CA/FO.

32. Respondent shall pay the civil penalty within thirty (30) days of receiving a fully executed copy of this CA/FO. Respondent shall submit a certified or cashier's check in the amount of four thousand eight hundred and seventy two dollars (\$4872.00), payable to "EPA Hazardous Substance Superfund," to:

U.S. EPA, Region IX  
Attn: Superfund Accounting  
P.O. Box 360863M  
Pittsburgh, PA 15251

33. The check shall reference Respondent's name and the appropriate docket number (CERCLA-9-2002-0007), and shall be accompanied by a cover letter stating that payment is being

1 made pursuant to this CA/FO. The cover letter and civil  
2 penalty shall be sent by certified mail, return receipt  
3 requested. Copies of the transmittals shall be sent to:

4 John J. Lyons (ORC3)  
5 Assistant Regional Counsel  
6 U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

7 and

8 Regional Hearing Clerk (ORC-1)  
9 U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

10  
11 34. In accordance with the Debt Collection Act of 1982 and U.S.  
12 Treasury directive TFRM 6-8000, failure to send the penalty  
13 by the due date will result in imposition of interest from  
14 the effective date of this CA/FO at the current interest  
15 rate published by the U.S. Treasury, as described at 40  
16 C.F.R. §13.11. In addition, a twelve percent (12%) per  
17 annum penalty will be applied on any principal amount not  
18 paid within ninety (90) days of the due date.

19 35. The penalties specified in this CA/FO shall represent civil  
20 penalties assessed by EPA and shall not be deducted for  
21 purposes of federal, state or local taxes.  
22

23 I. SUPPLEMENTAL ENVIRONMENTAL PROJECT  
24

25 36. Respondent shall implement a Supplemental Environmental  
26 Project (SEP), as set forth in this Section of the CA/FO.

27 37. Within forty-five days after Respondent has signed this  
28



1 CA/FO, Respondent shall have purchased and delivered to  
2 the Riverside County Department of Health and California  
3 Department of Forestry a total of sixteen VHF Sceptar Pagers  
4 (SP-AV01, CVS10000X) (and related batteries, chargers and  
5 cases) to be used to communicate with the Riverside County  
6 Hazardous Materials Emergency Response Team.

7 38. Within fifteen days following delivery of the delivery of  
8 the VHF Sceptar Pagers to the Riverside County Department of  
9 Health and California Department of Forestry, Respondent  
10 shall certify to EPA in writing that delivery of this  
11 equipment has occurred and that at least \$6,328.00 was  
12 expended to purchase the pagers and related equipment. The  
13 signatory for the Respondent shall state under penalty of  
14 law that the information provided in the certification is  
15 based on true, accurate and complete information, which the  
16 signatory can verify personally or regarding which the  
17 signatory has inquired of the person or persons directly  
18 responsible for gathering the information. This  
19 certification shall be mailed to John Lyons at the location  
20 and address set out in Paragraph 33 of this CA/FO.

21 39. The deadlines established in Paragraphs 37 and 38 of this  
22 CA/FO may be extended by EPA upon a showing by Respondent,  
23 in writing, that circumstances beyond the reasonable control  
24 of the Respondent have made compliance with a deadline  
25 impracticable. The decision whether to grant or deny any  
26 request for extension of such deadline shall be at the sole  
27 and unreviewable discretion of the Director of the Superfund  
28

1 Division of EPA, Region IX.

2 40. In the event that the Respondent publicizes the SEP,  
3 Respondent shall state in a prominent manner that the  
4 project was undertaken as part of a settlement of an  
5 enforcement action brought by EPA.  
6

7 J. DELAY IN PERFORMANCE / STIPULATED PENALTIES  
8

9 41. In addition to the interest and per annum penalties  
10 described above, in the event that Respondent fails to pay  
11 the full amount of the penalty, or fails to meet a deadline  
12 established in Paragraphs 37 or 38, within the time specified  
13 in paragraph 32, Respondent agrees to pay Complainant a  
14 stipulated penalty up to the amount of TWO THOUSAND, FIVE  
15 HUNDRED DOLLARS (\$2,500) for each day that the payment or  
16 performance is late. Stipulated penalties shall begin to  
17 accrue on the day after payment or performance is due, and  
18 shall continue to accrue through the final day until payment  
19 or performance is complete.

20 42. Respondent shall pay stipulated penalties within fifteen  
21 (15) days of receipt of a written demand by Complainant for  
22 such penalties. Payment of stipulated penalties shall be  
23 made in accordance with the procedure set forth for payment  
24 of penalties in Section H.

25 43. If a stipulated penalty is not paid in full, interest shall  
26 begin to accrue on the unpaid balance at the end of the  
27 fifteen-day period at the current rate published by the  
28

1 United States Treasury, as described at 40 C.F.R. §13.11.  
2 44. The stipulated penalties specified in this CA/FO shall  
3 represent civil penalties assessed by EPA and shall not be  
4 deducted for purposes of federal, state or local taxes.  
5

6 K. RESERVATION OF RIGHTS  
7

8 45. Complainant reserves the right to take any additional  
9 action, including but not limited to, the imposition of  
10 civil penalties, to enforce compliance with this Agreement  
11 or with CERCLA, EPCRA and their implementing regulations.  
12 46. Except to the extent provided in paragraphs 25 and 31 above,  
13 this CA/FO shall not be construed as a covenant not to sue,  
14 release, waiver or limitation of any rights, remedies,  
15 powers or authorities, civil or criminal, which Complainant  
16 has under CERCLA, EPCRA or any other statutory, regulatory  
17 or common law enforcement authority of the United States.  
18 47. Compliance by Respondent with the terms of this CA/FO shall  
19 not relieve Respondent of its obligations to comply with  
20 EPCRA, CERCLA or any other applicable local, state or  
21 federal laws and regulations.  
22

23 L. MISCELLANEOUS  
24

25 48. This CA/FO may be amended or modified only by written  
26 agreement executed by both EPA and Respondent.  
27 49. The headings in this CA/FO are for convenience of reference  
28

only and shall not affect interpretation of this CA/FO.

50. Each party to this action shall bear its own costs and attorneys' fees.

51. Complainant and Respondent consent to entry of this CA/FO without further notice.

9/23/02  
Date

Anthony J. Pack  
Anthony J. Pack, General Manager  
Eastern Municipal Water District

[Signature]  
Date

[Signature]  
Jane Diamond, Acting Director  
Superfund Division  
U.S. Environmental Protection Agency,  
Region IX

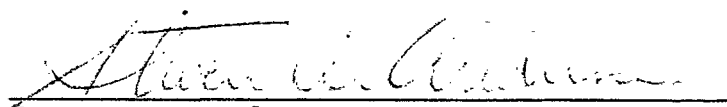
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FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (CERCLA Docket No. CERCLA-9-2002-0007) be entered and that Respondent complete all tasks required under this CA/FO, and pay a civil penalty of four thousand eight hundred and seventy two dollars (\$4,872.00) by payment made payable to "EPA Hazardous Substance Superfund," in the manner and form specified in Section H of this CA/FO within thirty (30) days after Respondent receives a fully executed copy of this Consent Agreement and Final Order. Respondent shall also complete any and all tasks required by this Consent Agreement within the times provided in this Consent Agreement and Final Order.

THIS FINAL ORDER SHALL BE EFFECTIVE IMMEDIATELY.

4/30/02  
Date

  
Steven W. Anderson  
Regional Judicial Officer  
U.S. Environmental Protection Agency,  
Region IX

CERTIFIED MAIL NO. 7000 0520 0021 6107 4096

RETURN RECEIPT REQUESTED

Re: Eastern Municipal Water District


Docket No. CERCLA 9-2002-0007

CERTIFICATE OF SERVICE

I hereby certify that a fully executed copy of the Complaint, Consent Agreement and Final Order in the Matter of Eastern Municipal Water District, Docket No. CERCLA 9-2002-0007 was sent certified mail, return receipt requested, to:

Anthony J. Pack  
General Manager  
Eastern Municipal Water District  
2270 Trumble Road  
Perris, CA 95270

9-30-2002  
Date

  
Danielle Carr  
Regional Hearing Clerk  
United States, EPA, Region IX  
Office of Regional Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

CERTIFIED MAIL NO. 7000 0520 0021 6107 4096

RETURN RECEIPT REQUESTED

Re: Eastern Municipal Water District

Docket No. CERCLA 9-2002-007

SEP 3 0 2002

Anthony J. Pack  
General Manager  
Eastern Municipal Water District  
P.O. Box 8300  
Perris, CA 92572-8300

Re: In the Matter of Eastern Municipal Water District  
Docket No. CERCLA-9-2002-007

Dear Mr. Pack:

Enclosed please find an executed copy of the Complaint, Consent Agreement and Final Order (CA/FO) in the above captioned matter. We appreciate the efforts of your counsel and staff to resolve this matter appropriately and expeditiously.

If you or your staff have any questions about the enclosed CA/FO, please contact Mary Wesling of my staff at (415) 972-3080 or John Lyons of the Office of Regional Counsel at (415) 972-3889.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jane Diamond".

Jane Diamond, Acting Director  
Superfund Division

Enclosure